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*Attorneys for Plaintiffs Ted Souza, Friends Of Del Norte,
Environmental Protection Information Center, and
Center For Biological Diversity*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

TED SOUZA, an individual; **FRIENDS OF
DEL NORTE; ENVIRONMENTAL
PROTECTION INFORMATION
CENTER**, a non-profit corporation; and
**CENTER FOR BIOLOGICAL
DIVERSITY**, a non-profit corporation,

Plaintiffs,

v.

**CALIFORNIA DEPARTMENT OF
TRANSPORTATION; MALCOLM
DOUGHERTY**, in his official capacity as
Director of the State of California Department
of Transportation; the **NATIONAL MARINE
FISHERIES SERVICE**; and **SAMUEL D.
RAUCH III**, in his official capacity as Acting
Assistant Administrator for Fisheries,

Defendants.

Case No. 13-cv-4407-JD

**STIPULATION AND ~~PROPOSED~~
ORDER AS TO ATTORNEYS' FEES
AND COSTS**

WHEREAS, Plaintiffs, an individual and non-profit public interest organizations, filed an action on September 23, 2013, Case No. 13-cv-4407 (the “Subject Litigation”), against the California Department of Transportation (“Caltrans”) and Malcolm Dougherty, in his official capacity as Director of Caltrans (collectively, the “State Defendants”); and against the National Marine Fisheries Service (“NMFS”), and Eileen Sobeck, in her official capacity as NMFS Assistant Administrator for Fisheries (collectively, the “Federal Defendants”), concerning Caltrans’ proposed 197/199 Safe STAA Access Project on U.S. Route 199 and State Route 197 in Del Norte County, CA (the “Proposed Project”), *see* Dkt. 1.;

WHEREAS, as used herein “Subject Litigation” does not include within its definition any subsequently filed action or any action currently pending in California State court;

WHEREAS, Plaintiffs’ Complaint asserted seven causes of action, all under the Administrative Procedure Act: (1) failure to adequately engage in Endangered Species Act (“ESA”) consultation (against NMFS); (2) failure to adequately engage in consultation under § 305 of the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”) (against all Defendants); (3) failure to adequately engage in Wild and Scenic Rivers Act consultation (against the State Defendants); (4) failure to prepare an Environmental Impact Statement pursuant to the National Environmental Policy Act (“NEPA”) (against the State Defendants); (5) failure to prepare an adequate Environmental Assessment pursuant to NEPA (against the State Defendants); (6) failure to comply with the Department of Transportation Act as required by NEPA (against the State Defendants); and (7) failure to comply with NEPA, the ESA, the MSA, the Wild and Scenic Rivers Act, and the Department of Transportation Act (against all Defendants);

WHEREAS, Plaintiffs filed a Motion for Preliminary Injunction on March 19, 2014;

WHEREAS, the Court granted Plaintiffs’ Motion for Preliminary Injunction on May 2, 2014 (the “PI Order”), based on its determination that there were serious questions on the merits regarding Plaintiffs’ First Cause of Action (ESA claim against NMFS); *see* DKT. # 87;

WHEREAS, following a conference with the Court, in lieu of a previously agreed upon stay of the Subject Litigation, the parties, pursuant to the Court’s stated preference, entered into

a stipulated order that *inter alia* provided for the injunction to remain in place and dismissed the Subject Litigation without prejudice and subject to a tolling agreement, and the stipulated order was entered by the Court on July 9, 2014, *see* DKT. 97 (the “Stipulated Order”);

WHEREAS, Plaintiffs’ Complaint and other filings asserted that they filed the Subject Litigation for the purpose of advancing the public interest in requiring Caltrans and NMFS to meet their obligations under federal law to adequately assess the Proposed Project’s environmental impacts, including, without limitation, its impacts on the salmonids of the Smith River;

WHEREAS, on September 26, 2014, Plaintiffs filed a Motion for an Award of Attorneys’ Fees and Reimbursement of Costs Under the Equal Access to Justice Act (“Plaintiffs’ Motion for Fees and Costs”);

WHEREAS, The State Defendants and Plaintiffs (collectively, the “Settlement Parties”), believe it is in the interests of judicial economy, the public interest, and the Settlement Parties’ interests to avoid further litigating Plaintiffs’ Motion for Fees and Costs;

WHEREAS, on March 20, 2015, the Settlement Parties reached tentative agreement to settle Plaintiffs’ Motion for Fees and Costs as against the State Defendants for \$100,000;

WHEREAS; on April 13, 2015, the Court terminated as moot Plaintiffs’ Motion for Fees and Costs, in light of the parties’ tentative settlement and for administrative reasons, *see* DKT. 144;

WHEREAS, Plaintiffs have represented that the law firm of COTCHETT, PITRE & MCCARTHY, LLP has waived all of its attorneys’ fees incurred in the Subject Litigation through the date of this Stipulation and Order; and

WHEREAS, the undersigned counsel for The State Defendants has authorized the undersigned counsel for the Plaintiffs to electronically sign this document on his behalf;

THEREFORE, the Settlement Parties hereby stipulate to the following, subject to Court approval:

1. The State Defendants shall pay Plaintiffs the amount of \$100,000 in settlement of Plaintiffs’ Motion and any and all claims for an award of litigation costs incurred in the

1 Subject Litigation to date, including \$85,000 in attorneys' fees, and \$15,000 in other litigation
2 costs (the "Payment").

3 2. The Payment shall be made by the State Defendants to Gross Law, P.C., in
4 accordance with the payment information provided by Gross Law, P.C., for distribution.

5 3. The State Defendants shall submit all necessary paper work for the processing of
6 the Payment to the appropriate office(s) within ten (10) business days following entry of this
7 Order.

8 4. Upon entry of this Order, the State Defendants shall be released of any and all
9 existing or potential claims for litigation costs, of any type, amount or nature, including
10 attorneys' fees, incurred in or arising from the Subject Litigation through the date of this
11 Stipulation and Order that Plaintiffs may have or make against the State Defendants. Plaintiffs
12 reserve the right to seek additional fees and costs incurred subsequent to this Stipulation and
13 Order in an action other than the Subject Litigation. The State Defendants do not waive any
14 right to contest any such fees claimed by Plaintiffs or Plaintiffs' counsel, including entitlement
15 thereto, with the sole exception that the State Defendants shall not argue that any such claim for
16 fees is released by virtue of this Stipulation and Order.

17 5. The Court shall retain jurisdiction to enforce and oversee compliance with the
18 terms and conditions of this Stipulation and Order.

19 6. The Settlement Parties, by their duly authorized representatives, agree to this
20 Stipulation.

21 7. The provisions of this Stipulation shall apply to and be binding upon the
22 Settlement Parties including, but not limited to, their officers, directors, servants, employees,
23 successors, and assigns.

24 8. This Stipulation constitutes the entire agreement of the Settlement Parties
25 concerning the rights and obligations discussed herein. No other agreement shall govern the
26 rights of the Settlement Parties with respect to the matters resolved by this Stipulation, except in
27 accordance with the terms herein.

28

9. The Settlement Parties acknowledge and agree that neither this Stipulation nor the settlement amount herein shall be used or considered as an admission of any facts alleged in the Subject Litigation, or of the substance or merits thereof, or of any liability, fault or responsibility concerning any of the allegations or disputes related to the claims for attorneys' fees and costs, including but not limited to the validity of such claims, rates or amounts thereof, nor of any allegations in the Complaint, and no past or present wrongdoing on the part of any of the Settlement Parties shall in any way be implied by this Stipulation or its terms.

Respectfully Submitted,

Dated: May 15, 2015

GROSS LAW, P.C.

/S/ Stuart G. Gross
STUART G. GROSS

Attorneys for Plaintiffs

Dated: May 15, 2015

RONALD W. BEALS
JANET WONG
DEREK S. VAN HOFTEN

/S/ Derek S. Van Hoften
DEREK S. VAN HOF TEN

Counsel for State Defendants


PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: May 15, 2015

IT IS SO ORDERED.

JAMES DONATO
United States District Judge

IT IS SO ORDERED



Judge James Donato

TO ATTORNEYS' FEES AND COSTS: